

UNITED STATES OF AMERICA)
)
 v.) ORDER
)
 SHERROD MAIR)

Other federal district and appellate courts, when examining the question of whether a person civilly committed to the custody of the Attorney General under the provisions of 18 U.S.C. § 4241 et seq. may bring a motion under 28 U.S.C. § 2255, have almost universally held that such a person is not a “prisoner in custody under sentence of a court” for the purposes of 28 U.S.C. § 2255 and therefore is not entitled to bring a motion under that statute. See, e.g., United States v. Hicks, 5:99-HC-89-BR, Order of 7/22/03 at 2 (citing several cases), aff’d, No. 03-7295 (4th Cir. July 27, 2004); United States v. Griffin, No. 97-16193, 1999 WL 184558, *5 (9th Cir. Mar. 29, 1999) (unpublished) (“where the question of mental competency has been determined in a Section 4244 proceeding . . . [,] a Section 2255 collateral attack on the sentence based on the same ground will not ordinarily be permitted.”). But see Johnson v. Settle, 184 F. Supp. 103, 106 (D. Mo. 1960) (petitioner committed to the custody of the Attorney General under 18 U.S.C. § 4245¹ “is, for all intents and purposes, entitled to seek relief from such confinement within the ambit of 28 U.S.C. § 2255.”). In addition, the Fourth Circuit has in other contexts emphasized the distinction between persons under a civil commitment and criminal defendants, see United States v. Baker, 45 F.3d 837, 842-43 (4th Cir. 1995) (while a respondent in a civil commitment hearing is entitled to procedural due process, “the constitutional rights to which a defendant in a criminal trial is entitled do not adhere to a respondent in a commitment hearing”) (citing Addington v. Texas, 441 U.S. 418, 428 (1979); United States v. Copley, 935 F.2d 669, 672 (4th Cir.1991)), and this court also notes that it has previously held that such a person is not a “prisoner” as that term is defined in the Prisoner Litigation Reform Act. See Copley v. Reno, No. 5:00-CT-656-BR, EDNC, Order of 4 March 2003 at 5.

For the foregoing reasons, the court concludes that respondent is not entitled to seek relief

¹ The court notes that a person committed under 18 U.S.C. § 4245 is a “person serving a sentence of imprisonment[.]”

under 28 U.S.C. § 2255, and it is therefore DISMISSED.

This 17 June 2010.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge